To: Department of Homeland Security
Department of Transportations

From: Mayor Jerry Abramson
Louisville Metro Government
Louisville, Kentucky

Subject: Docket No. RSPA – 2004 – 18730
Hazardous Materials: Enhancing Rail Transportation Security
For Toxic Inhalation Hazard Materials
Sponsored by DHS and DOT

Date: October 18, 2004

In response to the Federal request for comments on the proposal to enhance transportation security, noted in the above docket, the following remarks are offered. Many of our citizens have raised concerns regarding the storage of hazardous materials close to schools and residential neighborhoods. Although we have a nationally recognized response program in our community, our concerns for the community and our first responders is paramount in our comments. Our remarks primarily address the placarding requirements of rail cars noted in section B and in the storage of these materials discussed in section C.

Section B - Identification of Materials and Hazard Communication

It is our opinion that no markings, which are currently placed on the rail cars to assure the safe handling of the cars and their contents, should be removed at this time. The potential negative impact on the safety of local responders, railroad employees and communities would increase without these necessary markings. It is our understanding that at present there exists no system or procedure that could as simply and effectively communicate to “First Responders” the hazards of the material and appropriate first response actions as the current placarding system in conjunction with the “Emergency Response Guide.” As with the current placards system the first responder has been taught to use other identifying markings to properly identify the hazards associated with a release or potential release of a material. This is a system and tool that has been integrated into the training of first responders for decades. This system is intended to be the first tool used by responders and is intended to be usable by all first responders in the nation. Additional product identification procedures currently in place, i.e. the transport papers, are generally not readily available in the event of an emergency and technology-based systems, such as ORIES, are not as universally available to many communities and first responders.

- For safety reasons, any alternate system developed would need to be in the hands of every first responder before the elimination of the current system.

- The cost of any such transition would obviously depend on the yet unknown nature of the replacement system, however local jurisdiction will need the financial assistance of the Federal government to make the transition. The retraining costs for the millions of first responders in the country would be significant.

- Removal of the markings on rail cars, which indicate that the cars are owned or used by internationally known chemical companies, could be considered. Removal of company identification marks may lessen the potential of these rail cars being the target of terrorist attack.

- No reduction in safety for either responders or communities would be acceptable in the process of enhancement of security. Our recommendation would be to provide an overlap of the old and the new to allow for maximum safety in the transition.

- A unilateral change for this country would have significant impacts on the railroads in trying to meet any alternative security plan as all trains crossing borders would have to be in compliance with the regulations of each country.

I believe the greatest risk to communities relating to toxic materials like TIH is in the routine handling, transfer and storage of these materials. We acknowledge that the national security issues are real but less probable than accidents in the normal handling of these materials. Therefore, any regulatory changes need to be balanced and err on the side of safety rather than the possible but less probable terrorist event. The concern is that regardless of the system put into use, security could be little enhanced, as international terrorists have shown that they operate with great understanding of our systems and would eventually learn of and use any new system established.

Section C - Temporary Storage of TIH Materials in Rail Tank Cars

It is our opinion that current security requirements are not sufficient for the temporary storage of TIH materials. All carriers should be required to conduct site-specific vulnerability assessments of locations used for the temporary storage of TIH materials. The vulnerability assessments should be modeled after those developed by the American Chemistry Council (ACC). Rail carriers should be required to survey the locations used for the temporary storage of TIH materials, focusing on locations like Serving Yards, where TIH materials may be held for indefinite periods of time, and develop a vulnerability assessment schedule for those locations. Locations in close proximity to critical facilities, high-density populations, or high threat areas should be placed first on the assessment schedule. Site-specific security enhancements should be developed, focusing on deterrence, detection, delay, response and containment elements.

- The amount of TIH materials at a site should be factored into the overall vulnerability assessment of a site, but there are many other factors that should be evaluated. Remote sites, separated from large populations and critical facilities, could be allowed to store greater amounts of TIH materials. Likewise locations with high security and redundant layers of protection could temporarily store larger amounts of TIH materials.

- There are existing limits on the time TIH materials can be held through most of the rail system. The one location where these materials may be held indefinitely is in Serving Yards. Here the materials are held for movement into the receiving facility and may be stored there for days or weeks. Time limits should be established and based on the vulnerability of the site and security measures in place.

- The community would supports DOT/DHS's development of specific performance-based criteria for facilities that store TIH materials. A specific security feature that may perform well at one location may be ineffective at another site. Security is achieved by the integration of many features (*e.g.*, fencing, lighting, restricted access, security personnel, remote monitoring, and the like).

- It may not be feasible to prohibit the temporary storage of rail tank cars carrying TIH materials in high-density population areas, but those areas then call for much greater security. All security measures should be tied into the DHS Threat Level and specific intelligence that may apply to an industry or location.

- Requirements to expedite handling and delivery of TIH rail cars should be a consideration of any proposed regulatory change. Some industries are already using expedited handling and delivery of TIH rail cars but that does not remove the security threat. Rail carriers need to work closely with the shippers and receiving facilities to improve the overall safety of the TIH materials. "Expedited handling and delivery" may be one element of the vulnerability reduction strategy but it may not be feasible for all locations or materials. The Federal government should take definite actions to facilitate expedited handing and delivery of TIH rail cars as part of an overall security plan.

In addition we feel that standardized homeland security templates and performance standards for railroads and rail yards should be developed along with how to conduct a vulnerability assessment. The plans should be evaluated for content and feasibility given the circumstances and conditions of the site. Local input should be sought and/or shared with the emergency response community. At a minimum, local emergency management and first responder agencies should be advised of the existence of approved plans and how a plan is activated and have contact information readily available.

I appreciate the opportunity to comment on regulations that impact the security and safety of the Louisville Metro area.